IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.1991 of 2005 (O&M)

Date of Decision: 29.10.2007

Banta Singh ...Appellant

Vs.

Sher Singh ...Respondent

CORAM Hon'ble Mr.Justice Vinod K.Sharma

Present: Mr.G.N.Malik, Advocate,
for the appellant.

Mr. Arun Jindal, Advocate,
for the respondent.

Vinod K.Sharma, J. (Oral)

This regular second appeal has been filed against the judgment and decree passed by the learned lower appellate court vide which suit filed by the plaintiff-appellant for permanent injunction has been ordered to be dismissed.

The plaintiff filed the present suit on the plea that in the year 1985 Nagar Panchayat, Sarwarpur, Tehsil Malerkotla had allotted plots to certain persons measuring 0.2 Biswas each and a resolution for completing the demarcation was also passed by Nagar Panchayat unanimously and the scheme was for landless persons. It was claimed that the plaintiff was allotted plot No.7 and after the allotment he constructed his house over it after spending huge amount. It was claimed that the defendant had no concern with the disputed house but he was threatening to take forcible possession of the same for which he has no right.

The suit was contested and in defence it was pleaded that under the policy of the Government of Punjab plots measuring 0.2 biswas each were allotted to landless persons of village Sarwarpur, Tehsil Malerkotla in the year 1985 and disputed plot was allotted to the defendant. After the said allotment Government of Punjab had constructed houses upon the same and the plot in the shape of court yard is in the ownership and possession of the defendant. It was claimed that the suit was not maintainable. It was also pleaded that the plaintiff has suppressed material facts.

Learned trial court decreed the suit in view of the resolution passed by the Gram Panchayat showing allotment of plot No.7 to the plaintiff-appellant. However, the said resolution was not proved and was marked. Learned trial court took into consideration the oral evidence by way of statement of Sarpanch showing that the plot was allotted to the

plaintiff-appellant and consequently decreed the suit.

Learned lower appellate court has reversed the said finding on the ground that the judgment of learned trial court was based on inadmissible evidence as document relied upon by the learned trial court was not an exhibited document but only a marked document. Learned lower appellate court also took note of the fact that PW 2 i.e. Sarpanch of the village who had appeared in support of the case of the plaintiff-appellant had not supported the case set up by the plaintiff and had taken a specific stand that no construction was raised by the plaintiff-appellant over the plot in dispute. It was also noticed that the evidence brought on record shows that the plaintiff-appellant was not landless person and in fact, owned a house where he was living. Other evidence brought on record by way of revenue record as well as the list of allottees which was duly exhibited showed that the plaintiff-appellant was not one of the allottees by the Government under the Scheme and therefore, reversed the finding of the learned trial court and dismissed the suit filed by the plaintiff-appellant.

Learned counsel for the appellant contends that following substantial questions of law arise for consideration in this appeal:

1. Whether the plot in dispute was allotted to the appellant by resolution dated 14.11.1985 mark-A?
2. Whether the appellant has duly proved the execution of the resolution dated 14.11.1985 in view of the admission of the defendant's witnesses?

In support of the questions as framed, the learned counsel for the appellant contends that once Sarpanch of the village has come in the witness box and supported the case of the plaintiff-appellant it was not open to the learned lower appellate court to have reversed the findings recorded by the learned trial court. He also placed reliance on the resolution dated 14.11.1985 to contend that the allotment by the Government was given on the basis of the resolution passed by the Nagar Panchayat and once the name of the appellant-plaintiff had appeared in the list prepared vide resolution of the Nagar Panchayat, learned lower appellate court was not justified to reverse the judgment and decree passed by the learned trial court and therefore, the impugned judgment is to be held as non-speaking.

On consideration of the matter, I find no force in this contention of the learned counsel for the appellant. Resolution dated 14.11.1985 was not proved on record nor any step was taken by the appellant even to get the same exhibited before the learned courts below. Be that as it may, the Nagar Panchayat was merely a recommending authority. The actual allotment was required to be made by the State Government. Once the name of the appellant-plaintiff did not appear in the list duly proved on record showing the name of the allottees, the learned lower appellate court was justified in reversing the finding recorded by the learned trial court. The document which required to be proved by leading cogent evidence and merely because witnesses produced by the defendant admitted the resolution could not be a ground to get it read in evidence

because the Sarpanch was required to prove the same in accordance with law. It may be noticed that even the Sarpanch did not support the case set up by the plaintiff. The order passed by the learned lower appellate court, therefore, is based on appreciation of documentary evidence as well as oral evidence brought on record and does not suffer from any illegality as is sought to be projected by the learned counsel for the appellant.

No substantial questions of law as framed arise for consideration in this appeal.

Dismissed.

(Vinod K.Sharma)
Judge

29.10.2007
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